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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 41st MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Thursday, 16 July 1998, at 3 p.m.

Chairman: Mr. P. KIRSCH (Canada)
later: Mr. MOCHOCHOKO (Lesotho)

CONTENTS

Agenda item		*Paragraphs*
11	Consideration of the question concerning the finalization and adoption of a convention on the establishment of an international criminal court in accordance with General Assembly resolutions 51/207 of 17 December 1996 and 52/160 of 15 December 1997 (*continued*)	1-23
12	Adoption of a convention and of other instruments deemed appropriate and of the final act of the Conference (*continued*)	24-25
11	Consideration of the question concerning the finalization and adoption of a convention on the establishment of an international criminal court in accordance with General Assembly resolutions 51/207 of 17 December 1996 and 52/160 of 15 December 1997 (*continued*)	26-52

The meeting was called to order at 3.15 p.m.

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CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr. 1; A/CONF.183/C.1/L.47/Add.2, L.68/Rev.2, L.84 and L.85; A/CONF.183/C.1/WGP/L.14/Add.3 and Corr.1)

Part 7 of the draft Statute (continued)

1. **Mr. FIFE** (Norway), Coordinator of the Working Group on Penalties, introduced the Group's report in document A/CONF.183/C.1/WGP/L.14/Add.3 and Corr.1. It contained a proposed text for article 79 *bis* and a statement that the Group recommended the President of the Conference should make in connection with the fact that the proposed Statue would not provide for the death penalty.

2. **Mr. VILLAGRAN KRAMER** (Guatemala) said that the proposals in the report resolved a complex problem for States whose legislation included the death penalty. He urged their acceptance by the Conference.

3. **Mr. YEE** (Singapore) said that it was an important principle of criminal justice that the penalty should be commensurate with the gravity of the crime. Singapore believed that the Court should be able to impose the most effective penalty, including the death penalty, for the crimes under its jurisdiction. That was why it had co-sponsored the proposal providing for the death penalty in document A/CONF.183/C.1/WGP/L.13. No delegation had claimed that the death penalty was prohibited under international law. Paragraph 2 of article 6 of the International Covenant on Civil and Political Rights allowed the sentence of death to be imposed for the most serious crimes. The right to life, recognized in article 3 of the Universal Declaration of Human Rights, must not be interpreted in a way that would threaten the right of individuals and of the community, including the international community, to security.

4. Conscious of the need to move the negotiations on in order to ensure the early establishment of a strong, effective and independent court, his delegation had supported the efforts of the Coordinator which had culminated in the compromise package now before the Committee. It wished to place on record its understanding that the decision not to include the death penalty in the Statute would in no way affect the sovereign rights of States to determine the appropriate legal measures and penalties to combat serious crimes effectively, including the right to impose the death penalty in accordance with international safeguards. The debate on that issue in the Conference had clearly demonstrated that there was no international consensus on the abolition of the death penalty.

5. **Mr. MAHARAJ** (Trinidad and Tobago) said that his country remained committed to the establishment of an international criminal court and had played a leading role in the initiation and development of the process that had led up to the present Conference.

6. The legislation of Trinidad and Tobago, like that of more than ninety other countries, provided for the death penalty for murder. His Government could not support the exclusion of the death penalty from those provided for in the Statute, and the proposals in the Working Group's report would go only some way to meeting the position of Trinidad and Tobago and of the States of the Caribbean Community (CARICOM). However, his Government would not stand in the way of the finalization of the text concerning penalties.

7. **Mr. WOLDWOLDE** (Ethiopia) said that crimes like genocide, war crimes and crimes against humanity called for penalties commensurate with their gravity. Exclusion of the death penalty for such crimes was unacceptable.

8. **Mr. HAMDAN** (Lebanon) said that Lebanon's legislation provided for the death penalty. His delegation would have wished capital punishment to be provided for in the Statute, but it accepted the compromise.

9. **Mr. Abdulmalik Ahmed AL SHEIKH** (Saudi Arabia) associated his delegation with the position of Lebanon.

10. **Mr. UBALIJORO** (Rwanda) endorsed the statements of the representatives of Singapore, Ethiopia and Trinidad and Tobago. The exclusion of the death penalty could not affect the right of sovereign States to apply it in aggravated circumstances, particularly in situations involving great loss of life.

11. **Mr. JERMAN** (United Arab Emirates) said that his country also applied the death penalty and considered that it should have been provided for in the Statute, but would not stand in the way of the proposed compromise.

12. **Mr. AL-AMERY** (Qatar) supported the statement of the representative of Lebanon. Capital punishment was provided for in his country's legislation, but his delegation would not break the consensus.

13. **Mr. ABDALLA AHMED** (Iraq) said that the fact that capital punishment was not provided for in the Statute would have no legal effect whatever on Iraq's national legislation.

14. *The Working Group's proposals were approved.*

Report of the Drafting Committee (continued)

15. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/C.1/L.68/Rev.2, containing the proposed provisions for Part 9 of the Statute. It was recommended that some of the provisions should be left in abeyance pending the approval of Part 2 of the Statute.

16. **Mr. HAMDAN** (Lebanon) said that his delegation had reservations concerning the proposed wording in article 90 allowing the Court to cooperate with a requesting State in connection with conduct that constituted a serious crime under the national law of that State, but not necessarily a crime within the jurisdiction of the Court.

17. **Mr. YEE** (Singapore), referring to paragraph 3 of article 90, drew attention to the footnote to the words "fundamental legal principle" in article 90, paragraph 2 *bis*, in document A/CONF.183/C.1/WGIC/L.11/Add.3, to the effect that the proviso in question would cover laws preventing the freezing or seizure of certain types of property, in which case other alternatives such as seizure of the proceeds of sale or disposal should be relied on. His delegation had agreed to the relevant text on that understanding.

18. **The CHAIRMAN** said that he took it that the Committee of the Whole agreed to adopt the Drafting Committee's recommendations for Part 9.

19. *It was so decided.*

20. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced documents A/CONF.183/C.1/L.84 and L.85, relating to Parts 7 and 8 of the draft Statute.

21. *The Drafting Committee's text was adopted.*

22. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, recalled that Part 11 of the draft Statute, consisting of article 102, had been adopted at the 39th meeting of the Committee of the Whole with the exception of paragraph 2 (f). He drew attention to the text for paragraph 2 (f) in document A/CONF.183/C.1/L.47/Add.2, and recommended that it should be adopted.

23. *It was so decided.*

ADOPTION OF A CONVENTION AND OTHER INSTRUMENTS DEEMED APPROPRIATE AND OF THE FINAL ACT OF THE CONFERENCE (*continued*) (A/CONF.183/2/Add.1; A/CONF.183/C.1/L.83)

Report of the Drafting Committee on the final act

24. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced the report in document A/CONF.183/C.1/L.83, containing the text proposed by that Committee.

25. *The Drafting Committee's text for the final act, including its annex, was adopted with a minor editorial amendment.*

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.78, L.82 and L.86-L.88; A/CONF.183/DC/R.31 and R.191-R.194)

Report of the Drafting Committee (*continued*)

26. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, said that the Committee of the Whole had recently approved document A/CONF.183/C.1/L.78, containing the recommendations of the Coordinator for Part 12. Perhaps the Drafting Committee would be authorized to do minor editing.

27. *It was so decided.*

28. **Mr. GADYROV** (Azerbaijan) said that his delegation wished to reserve its position on the reference in article 105 to voluntary contributions from individuals, corporations and other entities.

29. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced documents A/CONF.183/DC/R.191-R.194, on Part 13 of the draft Statute.

30. *The Drafting Committee's text was adopted.*

31. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/DC/R.31, containing a proposed text for the definition of the crime of genocide in article 5.

32. *The Drafting Committee's text was adopted.*

The meeting was suspended at 3.55 and resumed at 4.30 p.m.

33. *Mr. Mochochoko (Lesotho), Vice-Chairman, took the Chair.*

34. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/C.1/L.86 on Part 10 of the draft Statute, and drew attention to some minor typographical errors.

35. In regard to article 97, the question had been raised whether it was intended to exclude the right of a person who had completed a sentence to return to his or her country of origin, as provided for under international law. If that was not intended, article 97 should perhaps be amended.

36. **Mr. HAMDAN** (Lebanon) suggested that wording should be introduced to allow such a person to choose which State to be transferred to, provided that that State agreed or was legally obliged to receive him or her.

37. After considerable discussion, **the CHAIRMAN** said that, if he heard no objection, he would take it that the Committee of the Whole agreed to amend article 97 in the manner suggested by the representative of Lebanon.

38. *It was so decided.*

39. **Mr. AL-CHEIKH** (Syrian Arab Republic), referring to article 94, said that the provisions as they stood failed to take into account the concern expressed by many delegations regarding the proposal to require the Court to take into account, *inter alia*, the nationality of the sentenced person in designating the State of enforcement. He wished to express his delegation's reservations on the provision concerned.

40. **The CHAIRMAN** asked if he could take it that the Committee wished to adopt the Drafting Committee's text for Part 10, as amended.

41. *It was so decided.*

42. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/C.1/L.87 on Part 5 of the draft Statute.

43. **Mr. GADYROV** (Azerbaijan), referring to article 54, asked whether the term "gender" should not be accompanied by a cross-reference to the definition of "gender" in Part 2.

44. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, agreed and said that the text should be amended accordingly. He also noted that certain provisions in Part 5 were dependent on decisions to be taken on articles in Part 2. He recommended that the Committee of the Whole should adopt Part 5 and delegate to the Drafting Committee the task of ensuring that, once Part 2 was approved, the appropriate changes were made in Part 5.

45. **Mr. AL-CHEIKH** (Syrian Arab Republic) expressed his delegation's reservations regarding the provisions in article 54 allowing the Prosecutor to stop an investigation in the supposed interests of justice.

46. After some further discussion, **the CHAIRMAN** asked if he could take it that the Committee of the Whole agreed to adopt the recommendations of the Chairman of the Drafting Committee.

47. *It was so decided.*

48. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, introduced document A/CONF.183/C.1/L.88 on Part 6 of the draft Statute, and drew attention to some minor errors.

49. **Mr. AL-CHEIKH** (Syrian Arab Republic) expressed his delegation's reservations on the provisions concerning trial *in absentia*.

50. *With minor drafting changes, the Drafting Committee's text for Part 6 was adopted.*

51. **Mr. BASSIOUNI** (Egypt), Chairman of the Drafting Committee, drew attention to document A/CONF.183/C.1/L.82, containing a proposed text for the preamble to the Statute. The text had since been further modified, and the final text proposed was the following:

"*Conscious* that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

"*Mindful* that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

"*Recognizing* that such grave crimes threaten the peace, security and well-being of the world,

"*Affirming* that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

"*Determined* to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes,

"*Recalling* that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

"*Reaffirming* the Purposes and Principles of the Charter of the United Nations,

"*Determined* to these ends and for the sake of present and future generations to establish an independent permanent International Criminal Court in relationship with the United Nations system with jurisdiction over the most serious crimes of concern to the international community as a whole,

"*Emphasizing* that the International Criminal Court established under the Statute shall be complementary to national criminal jurisdictions,

"*Resolved* to guarantee lasting respect for and the enforcement of international justice,

"*Have agreed as follows*:".

52. *The proposed text was adopted.*

The meeting rose at 5.35 p.m.